

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DONALD HEIMSTAEDT and TODD KORTE,

Plaintiffs,

-against-

PREM.AIR NEW YORK, LLC, PREM.AIR GROUP
OF NEW YORK, LLC, PREM.AIR GROUP, LLC,
MCQUAY NEW YORK, LLC, GEORGE KOUTSSOS,
ERIC BERKOWITZ, MCQUAY NEW YORK PROFIT
SHARING PLAN, and XYZ TRUSTEES OF THE
MCQUAY NEW YORK, LLC 401(k) PROFIT
SHARING PLAN,

Defendants.
-----X

Case No.: 07CIV9389

**ANSWER OF
PREM.AIR GROUP LLC**

(Rakoff, J)

Defendant, Prem.Air Group, LLC ("Prem.Air Group"), by his attorneys, Arthur J. Semetis, P.C., answers the Complaint (the "Complaint"), upon information and belief, as follows:

**AS AND FOR A RESPONSE
TO THE INTRODUCTION**

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the Complaint.

**AS AND FOR A RESPONSE
TO JURISDICTION AND VENUE**

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 2 and 3 of the Complaint.

**AS AND FOR A RESPONSE
TO THE PARTIES**

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 4, 5, 6, 9 and 12 of the Complaint.

4. Admits the truth of the allegations set forth in paragraph 7 of the Complaint.

5. Denies the truth of the allegations set forth in paragraph 8 of the Complaint as to defendant Prem.Air Group LLC, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraph 8 of the Complaint.

6. Admits the truth of the allegations set forth in paragraph 10 of the Complaint that Koutsos is a member, officer and director of Prem.Air Group LLC, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in the paragraph 10 of the Complaint.

7. Denies the truth of the allegations set forth in paragraph 11 of the Complaint that Berkowitz was a member, officer and director of Prem.Air Group LLC, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraph 11 of the Complaint.

**AS AND FOR A RESPONSE TO THE
FACTS COMMON TO ALL COUNTS**

8. Denies the truth of the allegations set forth in paragraphs 13, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 in the Complaint as to Prem.Air Group LLC and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 13, 14, 15, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of the Complaint.

9. Denies the truth of the allegations set forth in paragraphs 16, 17 and 21 of the Complaint.

**AS AND FOR A RESPONSE
TO COUNT I**

10. In response to paragraph 33 of the Complaint, defendant Prem.Air Group LLC, repeats, reiterates and re-alleges its responses to paragraphs 1 through 32 of the Complaint as if fully set forth herein.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 34, 35 and 36 of the Complaint.

12. Denies the truth of the allegations set forth in paragraphs 37, 38, 39, 40, 41, 42 and 43 of the Complaint and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 37, 38, 39, 40, 41, 42 and 43 of the Complaint.

**AS AND FOR A RESPONSE
TO COUNT II**

13. In response to paragraph 44 of the Complaint, defendant Prem.Air Group LLC, repeats, reiterates and re-alleges his responses to paragraphs 1 through 43 of the Complaint as if fully set forth herein.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 45 of the Complaint.

15. Denies the truth of the allegations set forth in paragraphs 46, 47 and 48 of the Complaint as to defendant Prem.Air Group LLC, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 46, 47 and 48 of the Complaint.

**AS AND FOR A RESPONSE
TO COUNT III**

16. In response to paragraph 49 of the Complaint, defendant Prem.Air Group LLC, repeats, reiterates and re-alleges its responses to paragraphs 1 through 48 of the Complaint as if fully set forth herein.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 50 and 51 of the Complaint.

18. Denies the truth of the allegations set forth in paragraphs 52, 53 and 54 of the Complaint as to defendant Prem.Air Group LLC, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 52, 53 and 54 of the Complaint.

**AS AND FOR A RESPONSE
TO COUNT IV**

19. In response to paragraph 55 of the Complaint, defendant Prem.Air Group LLC, repeats, reiterates and re-alleges his responses to paragraphs 1 through 54 of the Complaint as if fully set forth herein.

20. Denies the truth of the allegations set forth in paragraphs 56, 57 and 58 of the Complaint as to defendant Prem.Air Group LLC, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 56, 57 and 58 of the Complaint.

**AS AND FOR A RESPONSE
TO THE COUNT V**

21. In response to paragraph 59 of the Complaint, defendant Prem.Air Group LLC, repeats, reiterates and re-alleges his responses to paragraphs 1 through 58 of the Complaint as if fully set forth herein.

22. Denies the truth of the allegations set forth in paragraphs 60, 61, 62 and 63 of the Complaint as to defendant Prem.Air Group LLC, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 60, 61, 62 and 63 of the Complaint.

**AS AND FOR A RESPONSE
TO THE COUNT VI**

23. In response to paragraph 64 of the Complaint, defendant Prem.Air Group LLC, repeats, reiterates and re-alleges his responses to paragraphs 1 through 63 of the Complaint as if fully set forth herein.

24. Denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 65 and 66 of the Complaint.

25. Denies the truth of the allegations set forth in paragraphs 67 and 68 of the Complaint as to defendant Prem.Air Group LLC, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 67 and 68 of the Complaint

**AS AND FOR A RESPONSE
TO THE COUNT VII**

26. In response to paragraph 69 of the Complaint, defendant Prem.Air Group LLC, repeats, reiterates and re-alleges his responses to paragraphs 1 through 68 of the Complaint as if fully set forth herein.

27. Denies the truth of the allegations set forth in paragraphs 70 and 71 of the Complaint as to defendant Prem.Air Group LLC, and denies knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraphs 67 and 68 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

28. The Complaint fails to state a cause of action upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

29. Plaintiffs' claims are barred by the applicable statute of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

30. Plaintiffs were not employed by defendant Prem.Air Group LLC.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

31. Plaintiffs performed no services for Prem.Air Group LLC.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

32. Plaintiffs' claims for unjust enrichment are barred due to the existence of an at-will contract of employment between plaintiffs and defendant Prem.Air Group of New York LLC, f/k/a McQuay New York, LLC.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

33. Plaintiffs' claims for fraud and misrepresentation are barred due to the existence of an at-will contract of employment between plaintiffs and defendant Prem.Air Group of New York LLC, f/k/a McQuay New York, LLC.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

34. Plaintiffs' have failed to plead fraud and misrepresentation with the specificity required by law.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

35. Plaintiffs' claims for quantum meruit are barred due to the existence of an at-will contract of employment between plaintiffs and defendant Prem.Air Group of New York LLC, f/k/a McQuay New York, LLC.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

36. Defendants did not breach any fiduciary duty to plaintiffs.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

37. Plaintiffs have been paid all monies due and owing.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

38. Plaintiffs failed to comply with the terms and conditions of their at-will contract of employment with Prem.Air Group of New York LLC f/k/a McQuay New York LLC.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

39. Plaintiffs' claims against the individual defendants are preempted by ERISA.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

40. Plaintiffs failed to exhaust their administrative remedies pursuant to ERISA.

WHEREFORE, Prem.Air Group LLC, respectfully demands judgment against Plaintiffs as follows:

- a) Dismissing Plaintiffs' Complaint in its entirety; and
- b) Awarding attorney's fees, costs and disbursements and interest.

Dated: New York, New York
December 21, 2007

Arthur J. Semetis, P.C.

/s/

By: _____
Arthur J. Semetis. (AJS-8477)
Attorneys for *Prem.Air Group of
New York LLC f/k/a McQuay
New York LLC, Prem.Air Group,
LLC, George Koutsos i/n/a
George Koutssos, Eric Berkowitz,
Prem.Air NY 401(k) Profit Sharing
Plan f/k/a McQuay New York LLC
401(k) Profit Sharing Plan i/n/a
McQuay New York Profit Sharing
Plan, and XYZ Trustees of the
Prem.Air NY 401(k) Profit Sharing
Plan f/k/a McQuay New York,
LLC 401(k) Profit Sharing Plan*
286 Madison Avenue, 14th Floor
New York, New York 10017
(212) 557-5055

asdoc:c\prem.air-heimstaedt-korte.anws

CERTIFICATE OF SERVICE

CONSTANTINE T. TZIFAS, an attorney duly admitted to practice before United States District Court of the Southern District of New York affirms under the penalties of perjury:

On December 28, 2007, deponent served the within “ANSWER” upon:

Cole, Schotz, Meisel, Forman & Leonard, P.A.
900 Third Avenue, 16th Floor
New York, New York 10022

by delivering true copies, via first class mail under the exclusive custody and control of the U.S. Postal Service, of same to the above addresses.

Dated: December 28, 2007

/s/

Constantine T. Tzifas